

Mail Stop Interference
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Paper 1

Filed: 1 September 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

PAUL T. GARDINER

Junior Party
(Patent 6,136,339),

v.

**CARL W. HASTINGS,
DAVID J. BARNES, and
CHRISTINE A. DALEY,**

Senior Party
(Application 10/781,141).

Patent Interference No. 105,824
(Technology Center 1600)

DECLARATION - Bd.R. 203(b)¹

Part A. Declaration of interference

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the application(s), patent (if any), reissue application (if any), count(s)

¹ "Bd.R. x" may be used as shorthand for "37 C.F.R. ' 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 and claims designated as corresponding or as not corresponding to the count(s) appear
2 in Parts E and F of this DECLARATION.

3 **Part B. Judge managing the interference**

4 Administrative Patent Judge Sally Gardner Lane has been designated to manage
5 the interference. Bd. R. 104(a).

6 **Part C. Standing order**

7 A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this
8 DECLARATION. The STANDING ORDER applies to this interference.

9 **Part D. Initial conference call**

10 A telephone conference call to discuss the interference is set for **2:00 p.m. on 3**
11 **November 2011** (the Board will initiate the call).

12 No later than **four business days** prior to the conference call, each party shall
13 file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd. R. 204;
14 SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

15 A sample schedule for taking action during the motion phase appears as Form 2
16 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to
17 the conference call and to agree on dates for taking action. A typical motion period
18 lasts approximately eight (8) months. Counsel should be prepared to justify any request
19 for a shorter or longer period.

Part E. Identification and order of the parties

Junior Party

Named inventors: Paul T. Gardiner, Brampton, CANADA

Involved Patent: 6,136,339, issued 24 October 2000
from application 09/138,136, filed 21 August 1998

Title: FOOD SUPPLEMENTS AND METHODS
COMPRISING LIPOIC ACID AND CREATINE

Assignee: lovate T. & P. Inc.

Senior Party

Named Inventors: Carl W. Hastings, Glencoe, MO;
David J. Barnes, Wildwood, MO;
Christine A. Daley, Columbia, IL;

Involved Application: 10/781,141 filed 18 February 2004

Title: PERFORMANCE-ENHANCING DIETARY
SUPPLEMENT

Assignee: None of record

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

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Count 1

Claim 1 of Gardiner (US 6,136,339) or claim 11 of Hastings (10/781,141).

The claims of the parties are:

Gardiner: 1-36

Hastings: 11-27

The claims of the parties which correspond to Count 1 are:

Gardiner: 1-3, 14, 24, 25, and 36

Hastings: 11-14 and 25-27

The claims of the parties which do not correspond to Count 1, and therefore are not involved in the interference, are:

Gardiner: 4-13, 15-23 and 26-35

Hastings: 15-24

The parties are accorded the following benefit for Count 1:

Gardiner: None

Hastings: US 09/175,748, filed 20 October 1998

1 **Part G. Heading to be used on papers**

2 The following heading must be used on all papers filed in this interference, see

3 SO ¶ 106.1.1:

4 UNITED STATES PATENT AND TRADEMARK OFFICE

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9 AND INTERFERENCES

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12 PAUL T. GARDINER

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14 Junior Party
15 (Patent 6,136,339),

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17 v.

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19 CARL W. HASTINGS,
20 DAVID J. BARNES, and
21 CHRISTINE A. DALEY,

22
23 Senior Party
24 (Application 10/781,141).

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27 Patent Interference No. 105,824
28 (Technology Center 1600)
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33 **Part H. Order form for requesting file copies**

34 When requesting copies of files, use of SO Form 4 will greatly expedite
35 processing of the request. Please attach a copy of Parts E and F of this
36 DECLARATION with a hand-drawn circle around the patents and applications for which
37 a copy of a file wrapper is requested.

/Sally Gardner Lane/
Administrative Patent Judge

Enc:

Copy of STANDING ORDER
Form PTO-850
Copy of claims of 10/781,141

Revised 3 January 2006

cc (via overnight delivery):

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